

ANALYSIS

This ordinance amends Title 5 - Personnel, of the Los Angeles County Code by:

- Adding a new section of the Code implementing the Commuter Benefit Plan as a "qualified transportation fringe" benefit under IRS Code 132(f) for all County employees;
- Defining the rules for employee participation in the Plan as a Commuter Participant including definitions of Pre-Tax and After-Tax Contributions and the Pre-Tax Salary Reduction Cap; and
- Defining the terms and conditions for employee participation in Van Pool Benefits including the definition of a Commuter Highway Vehicle and the Taxation of Benefits Exceeding Statutory Limits.

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Acting County Counsel

By: 

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SRM:di

Requested: 10/15/09

Revised: 10/28/09

ORDINANCE NO. 2010-0015

An ordinance amending Title 5 – Personnel of the Los Angeles County Code relating to the implementation of the Commuter Benefit Plan.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Title 5, Personnel is hereby amended to add Chapter 5.91 to read as follows:

Chapter 5.91

COMMUTER BENEFIT PLAN

Sections:

<u>5.91.010</u>	<u>Purpose.</u>
<u>5.91.020</u>	<u>Definitions.</u>
<u>5.91.030</u>	<u>Participation.</u>
<u>5.91.040</u>	<u>Amendment or Termination of Plan.</u>
<u>5.91.050</u>	<u>Nonalienation.</u>
<u>5.91.060</u>	<u>Construction of the Plan.</u>
<u>5.91.070</u>	<u>Contract with Third Party.</u>
<u>5.91.080</u>	<u>Recordkeeping Accounts.</u>
<u>5.91.090</u>	<u>No Contract of Employment.</u>

SECTION 2. Section 5.91.010 is hereby added to read as follows:

5.91.010 Purpose.

The Commuter Benefit Plan is intended to qualify as a “qualified transportation fringe” under Section 132(f) of the Internal Revenue Code of 1986, as amended, and will be interpreted and administered by the Plan Administrator consistent with that provision. This plan is intended to provide a tax-savings benefit to participating Employees and to encourage the use of public transportation.

SECTION 3. Section 5.91.020 is hereby added to read as follows:

5.91.020 Definitions.

The following terms when used herein with initial capital letters, unless the context clearly indicates otherwise, shall have the following respective meanings:

A. "After-Tax Contribution" means any amount withheld from the Employee's salary pursuant to a Salary Reduction Agreement, after any applicable state and federal taxes have been deducted, for purposes of paying for the cost of the Transit Passes, Commuter Checks, or both (if applicable) under this Plan.

B. "Board" means the Los Angeles County Board of Supervisors.

C. "CEO" means the Chief Executive Officer of the County appointed by the Board pursuant to the Los Angeles County Code and any staff members to whom he has delegated responsibilities under this Plan.

D. "Commuter Check" means a voucher that may be used exclusively to pay for a Commuter Participant's allocable share of the lease on a vehicle that qualifies as a Commuter Highway Vehicle (as determined by the Plan Administrator) used to provide Van Pool Benefits to that Commuter Participant.

E. "Commuter Highway Vehicle" means a highway vehicle with a seating capacity of at least six (6) adults (excluding the driver) and with respect to which at least 80 percent of the vehicle's mileage for a year is reasonably expected to be: (1) for transporting Employees in connection with travel between their residences and their place of employment with the County; and (2) on trips during which the number of Employees transported for commuting is at least one-half of the adult seating capacity

of the vehicle (excluding the driver). A Commuter Highway Vehicle may be leased only from a company in the business of leasing vehicles that has agreed with the Plan Administrator to accept Commuter Checks exclusively to pay some or all of the cost of the lease on a vehicle that qualifies as a Commuter Highway Vehicle (as determined by the Plan Administrator) and no other type of vehicle.

F. "Commuter Participant" means an Eligible Employee who elects to purchase Transit Passes, Commuter Checks, or both through the Commuter Benefit Plan and who has executed the appropriate Plan Forms that authorize the auditor to make a payroll deduction to pay for the Transit Passes, Commuter Checks, or both.

G. "County" means the County of Los Angeles and (1) any governmental entity of which the Board is the governing body, and (2) any Trial Court Entity to the extent participation in the Plan by such Entity is authorized by state law or rules of court and provided such Entity has not elected not to participate in the Plan.

H. "Effective Date" means August 1, 2009, or such later date as determined by the Plan Administrator.

I. "Eligible Employee" means any full-time, part-time, or seasonal Employee in active service.

J. "Employee" means an individual who has been determined by the County (regardless of any determination made by any other person or entity) to be a common law employee of the County for federal income and/or employment tax purposes. If it is determined that an individual was erroneously categorized as not being an Employee,

he or she shall be treated as an Employee under the Plan only prospectively from the date of such determination.

K. "Plan" means the Commuter Benefit Plan and related policies or procedures adopted or approved by the Plan Administrator, as the same may be amended or restated from time to time.

L. "Plan Administrator" means the CEO or the person, entity, committee, or department designated by the CEO to manage Plan operations and to administer the Plan according to its terms.

M. "Plan Forms" means the Salary Reduction Agreement and such other enrollment and election materials that the Plan Administrator determines must be properly and timely completed and submitted to the Plan Administrator by an Eligible Employee to participate in the Plan. For Commuter Participants electing to purchase Commuter Checks, Plan Forms may include any information or certifications the Plan Administrator requires to conclude that the Commuter Check is issued for the lease of a Commuter Highway Vehicle. The Plan Administrator may authorize or require the completion of Plan Forms via voice response systems or electronic media that use electronic signatures in accordance with any applicable legal requirements and shall be entitled to rely on elections made pursuant to such voice response or electronic media system.

N. "Pre-Tax Contribution" means any amount withheld from the Employee's salary pursuant to a Salary Reduction Agreement, before any applicable state and federal taxes have been deducted, for purposes of paying for the cost of the Transit Passes or Commuter Checks available under this Plan.

O. "Pre-Tax Salary Reduction Cap" means the monthly limit set forth in Internal Revenue Code section 132(f)(2) (as adjusted from time to time pursuant to Internal Revenue Code section 132(f)(6)) on (1) the total value of Transit Passes and Commuter Checks that may be excluded from a Commuter Participant's gross income; and (2) amounts that may be deducted on a pre-tax basis from an Eligible Employee's salary and applied as a Pre-Tax Contributions to purchase Transit Passes, Commuter Checks, or both (if applicable).

P. "Salary Reduction Agreement" means the agreement by an Eligible Employee to reduce his salary and apply that salary reduction as Pre-Tax Contributions (or make a deduction from his salary to make After-Tax Contributions, if applicable) to purchase Transit Passes, Commuter Checks, or both.

Q. "Transit Passes" means any pass, token, farecard, voucher, or similar item entitling an employee to transportation (or transportation at a reduced rate) if the transportation is either on mass transit facilities (whether or not publicly owned) or provided by any person in the business of transporting persons for compensation or hire in a highway vehicle with a seating capacity of at least 6 adults (excluding the driver).

R. "Trial Court Entity" means each Los Angeles County Municipal Court, Los Angeles County Superior Court, and each unified, successor trial court entity (or portion thereof) established in the County of Los Angeles pursuant to California Government Code Section 70200 et seq.

S. "Van Pool Benefits" means transportation in a Commuter Highway Vehicle the lease for which is paid for, at least in part, via Commuter Checks.

SECTION 4. Section 5.91.030 is hereby added to read as follows:

5.91.030 Participation.

A. Commencement of Participation. Upon completion and submission of the Plan Forms, each Eligible Employee shall become a Commuter Participant on the Effective Date or the first day of the calendar month next following completion and submission of such Plan Forms, whichever is earlier. The Plan Administrator may authorize or require the completion of Plan Forms via voice response systems or electronic media that use electronic signatures in accordance with any applicable legal requirements and shall be entitled to rely on elections made pursuant to such voice response or electronic media system. Salary reductions or deductions pursuant to the Commuter Participant's election will begin in the month following timely completion and submission of the Plan Forms and Transit Passes, Commuter Checks, or both purchased with such salary reductions or deductions shall be distributed to the Commuter Participant beginning in the second month following such completion and submission. The Plan Administrator may condition participation in the Plan on an

Eligible Employee's agreement to pay Plan administrative expenses with After-Tax Contributions in accordance with subsection C.

B. Purchase of Transit Passes or Commuter Checks. A Commuter Participant may elect to reduce his salary in one month and apply Pre-Tax Contributions to purchase Transit Passes, Commuter Checks, or both for the following month through the Commuter Benefit Plan, provided he has timely completed and submitted the Plan Forms that authorize the reduction of salary for the cost of the Transit Passes, Commuter Checks, or both. A Commuter Participant may elect to reduce his salary and make Pre-Tax Contributions for a month up to the Pre-Tax Salary Reduction Cap. Any amount necessary to purchase Transit Passes, Commuter Checks, or both (if applicable) that is above the Pre-Tax Salary Reduction Cap will be deducted from salary and made as an After-Tax Contribution. Amounts that are deducted pursuant to a Salary Reduction Agreement but are not used to purchase a Transit Pass or Commuter Check may be carried over into subsequent months, subject to the forfeiture clause in subsection F of this section, and provided that the total Pre-Tax Contributions applied to purchase Transit Passes, Commuter Checks, or both (if applicable) for a month may not exceed the Pre-Tax Salary Reduction Cap for that month.

C. Payment of Administrative Fee. The Plan Administrator may, in its discretion, require that Eligible Employees agree to pay administrative fees with After-Tax Contributions as a condition of participating in the Plan. The Plan Administrator shall determine the administrative fee to be charged to each Commuter Participant.

D. Election Change. A Commuter Participant may change his salary reduction election, and the corresponding Pre-Tax or After-Tax Contributions for the purchase of Transit Passes or Commuter Checks, by timely completing and submitting the appropriate Plan Forms.

E. Termination of Participation. Participation in the Plan shall terminate when a Commuter Participant (1) ceases to be an Eligible Employee, in which case his salary reductions or deductions, and corresponding Pre-Tax and After-Tax Contributions, will cease for pay checks issued after the date he ceases to be an Eligible Employee; or (2) timely completes and submits the appropriate Plan Forms to terminate his salary reduction or deduction, in which case his salary reductions or deductions, and corresponding Pre-Tax and After-Tax Contributions, shall cease as of the first day of the month after the timely completion and submission of such Plan Forms. If a Commuter Participant's participation terminates because he or she ceases to be an Employee prior to the distribution of Transit Passes for which a salary reduction and Pre-Tax Contribution has already been made, the Transit Passes may be distributed to the former Commuter Participant, but the value of the Transit Pass shall be treated as taxable wages to the former Commuter Participant.

F. Forfeiture Upon Termination. Any salary reduction amount elected by the Commuter Participant that is not used to purchase a Transit Pass or Commuter Check will not be refunded to the Commuter Participant. Any unused balance credited to a Commuter Participant's recordkeeping account shall be forfeited upon his termination from employment.

G. Timely Completion of Plan Forms. The Plan Administrator shall determine and communicate to Eligible Employees the deadline by which Plan Forms must be completed and submitted in order for a salary reduction or deduction election, election change, or termination to be effective the following month.

H. Taxation of Benefits Exceeding Statutory Limits.

(1) A Commuter Participant who receives Van Pool Benefits shall be treated as receiving taxable wages equal to his allocable share of the fair market value of the use of the Commuter Highway Vehicle used to provide such Van Pool Benefits each month to the extent that fair market value exceeds the sum of: (1) the Pre-Tax Salary Reduction Cap (less the value of any Transit Passes provided on a pre-tax basis under the Plan for that month), and (2) any After-Tax Contributions or other after-tax amounts paid by the Commuter Participant to receive such Van Pool Benefits. The Plan Administrator shall allocate the value of the use of the Commuter Highway Vehicle on the relevant facts and circumstances among the Commuter Participants who share the use of the Commuter Highway Vehicle.

(2) A Commuter Participant who receives Transit Passes shall be treated as receiving taxable wages equal to the fair market value of the Transit Pass provided each month to the extent that fair market value exceeds the sum of: (1) the Pre-Tax Salary Reduction Cap (less the value of any Van Pool Benefits provided under the Plan for that month), and (2) any After-Tax Contributions or other after-tax amounts paid by the Commuter Participant to receive such Transit Pass.

SECTION 5. Section 5.91.040 is hereby added to read as follows:

5.91.040 Amendment or Termination of Plan.

The Plan may be amended or terminated by the County at any time; provided that the Plan Administrator shall provide for a runout period of at least three (3) months during which Commuter Participants may use any unused balance in their recordkeeping accounts to purchase Transit Passes or Commuter Checks before final termination of the Plan. Any amounts remaining in a recordkeeping account following expiration of the runout period and Plan termination shall be forfeited.

SECTION 6. Section 5.91.050 is hereby added to read as follows:

5.91.050 Nonalienation.

To the extent permitted by law and except as otherwise provided in the Plan, no right or interest of any kind of a Commuter Participant hereunder shall be transferable or assignable by him, nor shall any such right or interest be subject to alienation, anticipation, encumbrance, garnishment, attachment, execution, or levy of any kind voluntary or involuntary.

SECTION 7. Section 5.91.060 is hereby added to read as follows:

5.91.060 Construction of the Plan.

The Plan Administrator may implement any Board-approved memorandum of understanding with employee bargaining agents, construe any ambiguous provision of the Plan, correct any defect, supply any omission, or reconcile any inconsistency, in such manner and to such extent as the Plan Administrator in his discretion may determine; and any such action of the Plan Administrator shall be binding and

conclusive upon all Commuter Participants. Wherever appropriate in the Plan, the masculine gender shall include the feminine, and the feminine gender the masculine, unless the context clearly indicates otherwise.

SECTION 8. Section 5.91.070 is hereby added to read as follows:

5.91.070 **Contract with Third Party.**

The Plan Administrator may contract with one or more third parties to provide administrative services for the Plan. The cost of administration by a third-party administrator may, in the Plan Administrator's discretion, be paid by Commuter Participants with After-Tax Contributions.

SECTION 9. Section 5.91.080 is hereby added to read as follows:

5.91.080 **Recordkeeping Accounts.**

The Plan Administrator shall establish a recordkeeping account for each Commuter Participant. Each Commuter Participant's account will be credited with Pre-Tax and After-Tax Contributions as elected by the Participant and will be debited by the cost of any Transit Passes or Commuter Checks purchased by the Commuter Participant. Accounts established on behalf of Commuter Participants are for recordkeeping purposes only and amounts in those accounts are not held in trust.

SECTION 10. Section 5.91.090 is hereby added to read as follows:

5.91.090 **No Contract of Employment.**

Nothing herein contained is intended to be, or shall be construed as constituting, a contract or other arrangement between any Commuter Participant and the County to the effect that he will be employed for any specific period of time.

SECTION 11. Pursuant to Government Code 25123(f), this ordinance shall take effect immediately upon final passage.

[591LSCEO]

SECTION 12. This ordinance shall be published in The Daily Commerce a newspaper printed and published in the County of Los Angeles.



Gloria Molina
Chair

ATTEST:

Sachi A. Hamai
Sachi A. Hamai
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

I hereby certify that at its meeting of March 30, 2010 the foregoing ordinance was adopted by the Board of Supervisors of said County of Los Angeles by the following vote, to wit:

Ayes
Supervisors Zev Yaroslavsky
Don Knabe
Michael D. Antonovich
Gloria Molina

Noes
Supervisors None

Effective Date: March 30, 2010

Operative Date: _____

Sachi A. Hamai
Sachi A. Hamai
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By [Signature]
Deputy



APPROVED AS TO FORM:
ANDREA SHERIDAN ORDIN
County Counsel

By Leela Kapur
Leela Kapur
Chief Deputy County Counsel